IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2007

CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR

W.P.No.18915 of 2006

K.Murugesan ... Petitioner

vs

The Collector,
Periyar District,
Erode. ... Respondent

This petition came to be numbered by transfer of O.A. No.5771 of 1993 from the file of the Tamil Nadu Administrative Tribunal praying for the issuance of a Writ of certiorarified mandamus to call for the records relating to the impugned order of the respondent in Na.Ka.N81475/92/Pa.A.1, dated 25.5.93 and quash the same and direct the respondent to regularise the petitioner's absence during the period 13.5.1987 to 04.08.1988 as unearned leave on medical certificate and grant him all consequential benefits.

For Petitioner ... Mr.P.Rajendran

For respondent ... Mrs.Lita Srinivasan,G.A.

ORDER

The petitioner has filed the Original Application No.5771 of 1993 on the file of the Tamil Nadu Administrative Tribunal praying for a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the respondent in Na.Ka.N81475/92/Pa.A.1, dated 25.05.1993 and quash the same and direct the respondent to regularise the petitioner's absence during the period 13.05.1987 to 04.08.1988 as unearned leave on medical certificate and grant him all consequential benefits, and the same has been transferred to the file of this Court and renumbered as W.P.No.18915 of 2006.

2. It is the case of the petitioner that he was working as Extension Officer (Social Education and Public Relation) Modakurichi Block, Periyar District, by order of the Collector dated 07.05.1987, he was reverted to the category of Rural Welfare Officer, Grade-I for two years. His appeal to the Director of Rural Development, was allowed and that the penalty of reversion was set aside. During the

pendency of the appeal, he could not attend the Office due to his illness and took leave from 13.05.1987 to 04.08.1988. On recovery, the petitioner obtained a medical certificate issued by the authorised Government Medical Officers and finally on 05.08.1988, he submitted a report and he was allowed to join duty. Though he had unearned leave of 18 months to his credit, the absence between 13.05.1987 and 04.08.1988 was only 16 months. The District Collector, Erode, the respondent herein granted leave to the petitioner in the following manner:

13.05.1987 to 11.07.1987 - Unearned leave on medical certificate (for 60 days)
12.07.1987 to 08.11.1987 - Earned leave (for 120 days)
09.11.1987 to 04.08.1988 - Leave on loss of pay (for 270 days)

3. Aggrieved by the order of the respondent, the petitioner preferred an appeal to the Director of Rural Development, Chennai. By order dated 26.04.1990, the appellate authority rejected the petitioner's appeal and therefore, the petitioner filed O.A.No.2083 of 1990 to quash the said orders and sought a direction to the respondent to grant unearned leave on medical certificate for the period between 13.05.1987 and 04.08.1988. The Tribunal by order dated 18.06.1992, ordered as follows:

> "The notice for appearance before the Medical Board has been sent to him in communication dated 16.6.87, 13.8.87 and 20.8.87. The applicant has been thereafter on leave for a further period upto 4.8.1988 for which period presumably he should have made further leave applications. It is not clear, whether the department informed him that on account on his failure to appear before the medical board, his application for leave on medical grounds will not be considered. He had been eventually allowed to join on 5.8.88. Following the prolonged illness, normally he should have been referred to the medical board for certification of fitness before he was allowed to join duty. The applicant also, when the leave sought by him was not being sanctioned should have tried to ascertain from the department the reasons for the non sanction. As a senior Government employee, he should also be aware of the regulation that leave beyond 60 days on medical grounds can be sanctioned only on reference to the medical board and he should not have been sending his leave application for leave supported by certificates from private medical practitioners. That he had not at any time tried to ascertain from the office with the position regarding sanction of his leave also indicates, that his own conduct in the matter is open to question. Normally an employee will not be staying away from duty applying for leave during which period, he was not getting any salary, for such extended period of 450 days. However, in the absence of the records, we are not able to arrive at a

> conclusion in the matter. We would therefore direct that the applicant may be given a notice indicating the position, his failures to comply with the rules and regulations and reasons why his request for grant of leave on medical certificate cannot be agreed to, and orders passed after considering his representations. We are giving such direction, only because inspite of several opportunities, the relevant records to establish that the communication for appearance before the medical board had been served on the applicant were not produced and therefore, we are not able to finally decide the matter"

4. Pursuant to the orders of the Tribunal dated 18.06.1992, the petitioner requested the respondent to permit him to peruse the original records and also prayed for an enquiry. The petitioner perused the records on 22.02.1993 and found that the signature in the communication alleged to have been served on the petitioner's son was not genuine. Thereafter, the respondent by order dated 25.05.1993, rejected the petitioner's claim for regularisation of the period of absence from 13.05.1987 to 04.08.1988 as unearned leave on medical certificate. The said order is challenged in this writ petition.

5. Learned counsel for the petitioner submitted that there was no memo/communication issued by the respondent calling upon the petitioner to appear before the medical board. He further submitted that the person alleged to have served the communication on the petitioner's son on 25.08.1987 was not examined in the presence of the petitioner and that he was not given any opportunity to cross examine the said witness and therefore, reliance should not be placed on his evidence. Learned counsel for the petitioner further submitted that the certificate issued by the Government Medical Officers to prove his ailment should have been accepted and that the petitioner should have been granted medical leave with salary.

6. The respondent has filed a detailed counter affidavit and submitted that on 07.05.1987, the petitioner was reverted from the post of Extension Officer to Rural Welfare Officer, Grade-I/Assistant for a period of two years as a measure of penalty for certain malpractices committed by him in the implementation of Family Welfare Programme when he was an Extension Officer (Senior Education and Public Relation) Modakkurichi. Consequently, he was posted as Assistant in the cadre of Rural Welfare Officer, Grade-I in Kangeyam Panchayat Union by order dated 12.05.1987 and was relieved from the post of Extension Officer. Instead of joining the reverted post, the petitioner proceeded on leave on medical ground stating that he was suffering from 'Peptic Ulcer'. Quoting the same reason, the petitioner was continuously absent for 450 days from 13.05.1987 to 04.08.1988 and had been frequently sending medical certificates at monthly intervals. The respondent further submitted

that in order to avoid working in the reverted post, the petitioner availed long leave and finally when his appeal preferred to the Director of Rural Development, Chennai was allowed, the petitioner immediately joined the duty on 05.08.1988. The period of absence between 13.05.1987 and 04.08.1988 for 450 days was regularised in accordance with rules and regulations and that the petitioner accepted the same and received the leave salary without any objection. It is further submitted in the counter affidavit that as per the existing Rules, the unearned leave on medical ground should be supported by medical certificate issued by the District Medical Board and that there is no provision to accord sanction for unearned leave on medical certificate beyond 60 days, unless the District Medical Board certifies the illness after due examination. It is also stated that though the petitioner had periodically extended the leave every month for a continuous period of 450 days, he did not subject himself for medical examination as he was well aware that the Medical Board will not recommend his continuous absence for such a long period of 450 days for the only reason of 'peptic ulcer'. The respondent in his counter affidavit has also given the details of notices sent to the petitioner by the Department and the same are extracted hereunder:

"

Sl. No.	Current No. and the Officer who sent the reference	Extracts of the file	Address to which the reference was sent	Remarks
1	Ref No.8828/86/A1 dated 16.6.87 of the Block Development Officer, Modakkurichi	Since Thiru K.Murugesan (Applicant) has extended his leave for a month beyond 13.5.87 he should appear before the District Medical Board and obtain Medical Certificate	Thiru K.Murugesan,12 N.GGO Colony, Ist Street, Erode - 9. (Despatched Officially)	
2	Ref No.16143/M1/87 dt. 18.8.87 of the District Medical Officer, Erode	Directing him to appear before the Medical Examination on 26.8.87	.Do.	

Sl. No.	Current No. and the Officer who sent the reference	Extracts of the file	Address to which the reference was sent	Remarks
		at 10 A.M. without fail (Copy marked to B.D.O.)		
3	Ref No.8828/86/A1 dated 20.8.87 of the B.D.O., Modakkurichi.	Directing him to appear before the Medical Board on 26.8.87 and he has been informed that only after production of certificate from Medical Board Medical Leave will be recommended	.do.	
4	Ref.No.8828/86/A1 dated 5.11.87 of the Block Development Officer, Modakkurichi	DMO has been requested to examine the applicant, consequent on his extension of leave	Copy has been marked to his above residential address and despatched officially	
5	Ref.No.8828/86/A1 dated 13.11.87 of the Block Development Officer, Modakkurichi	.do.	.do.	
6	Ref.No.22175/M1/87 dated 19.11.87 of the D.M.O. Erode	DMO has requested the applicant to appear before the Medical Board on	Sent to his regular residential address officially	

Sl. No.	Current No. and the Officer who sent the reference	Extracts of the file	Address to which the reference was sent	Remarks
		25.11.87 for examination		
7	Ref.No.8828/86/A1 dated 31.12.87 of the B.D.O., Modakkurichi	DMO has been requested to examine the applicant. It has also been indicated that he has not appeared before the Medical Board on previous occasions	Copy has been sent to his regular residential address and despatched officially	
8	Ref.No.8828/86/A1 dated 10.2.88 of the B.D.O., Modakkurichi	.do.	.do.	
9	Ref.No.3021/M1/88 dated 24.2.88 of the D.M.O. Erode	Directing to appear for the Medical Examination on 3.3.88 at 10.00 A.M.	Sent to his regular residential address and copy marked to the B.D.O.	

Remarks: The reference has been served by pasting the same in his regular residence and has also been served through his son."

7. The respondent has further submitted that in spite of the receipt of the notice and affixture made in the residential address, the petitioner has failed to appear before the Medical Board and produced medical certificate to prove that he was suffering from illness. The respondent has further submitted that all the notices were sent only to the residential address with a direction to appear before the Medical board, but on the contra, invariably in all the leave letters the address of the petitioner was not furnished to the Department.

8. The respondent has further submitted that pursuant to the directions of the Tribunal, the petitioner was permitted to peruse the entire records on 22.02.1993 at 3 p.m. in the presence of the Personal Assistant to the Collector (P.D). Even after perusal of the records, the respondent did not submit the reply immediately.

Though the petitioner had denied his son's signature on the acknowledgement, he had failed to produce any specimen signature or documents for comparison. The respondent has further stated that the Office Assistant of Modakkurichi Panchayat Union who served the notice through his son had deposed that notice was given to the petitioner's son on 25.8.87 at 1.45 p.m and that his signature was also obtained. It is also further submitted that the petitioner did not demand cross examination of the Office Assistant who served the notice on the petitioner's son. In fine, the respondent submitted that the notices have been duly served on the petitioner, calling upon him to attend the Medical Board, but the petitioner has failed to prove that he was suffering from illness by producing a certificate from the Medical board.

9. I have heard Mr.P.Rajendran, learned counsel for the petitioner and Mrs.Lita Srinivasan, learned Government Advocate appearing for the respondent.

10. Admittedly, the petitioner had remained on leave continuously for 450 days and that he had been submitting medical certificates at regular intervals. As an Extension Officer, he should be aware of the regulations that leave beyond 60 days on medical grounds cannot be sanctioned without the certificate of the Medical Board. It is evident that right from 16.06.1987 onwards, the department had been continuously sending him letters instructing him to appear before the Medical Board and copies of the letters have been marked to the Block Development Officer. By Ref.No.16143/M1/87 dated 18.8.87, Ref.No.22175/M1/87 dated 19.11.87 and Ref.No.3021/M1/88 dated 24.2.88, the District Medical Officer, Erode has sent three letters to the petitioner to appear before the Medical Board for examination and the copies of those letters have been marked to the Block Development Officer. Though the petitioner has disputed the signature of his son on the acknowledgement, he has not proved the same by producing necessary documents containing the handwriting and specimen signature of his son. The petitioner who has disputed the signature ought to have proved the same by placing necessary materials. It is hard to believe that a person who was suffering from peptic ulcer till 4.8.88, has miraculously recovered from the same and joined duty on 5.8.88.

11. As regards the contention that the Office Assistant was not examined behind his back, the petitioner did not demand any cross examination of the Office Assistant. On the other hand, as many as nine letters have been sent to his residential address and affixure has also been made. The petitioner has failed to appear himself before the Medical Board and produced necessary proof for illness. In the circumstances, in the absence of any valid certificate from the Medical Board for the leave period beyond 60 days, the petitioner is not entitled to medical leave as a matter of right. Moreover, being a Senior Officer, the petitioner ought to have

appeared before the Medical Board and produced the medical certificate from the competent authority. It is clear the petitioner had availed long leave to avoid serving in the reverted post, and joined the post of Extension Officer, no sooner his appeal was allowed. In the light of the above, I do not find the authorities have committed any error in rejecting the medical certificates produced by the petitioner. In the absence of the certificate from the Board, denial of medical leave is justified and therefore there are no merits in the writ petition. Hence, the writ petition is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

gms

To

The Collector,
Periyar District,
Erode.

1 cc to Government Pleader, Sr. 52459

W.P.No.18915 of 2006

PV (CO)
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